UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD WASHINGTON, D.C.

GENERAL MOTORS, LLC

Respondent

and

CASE 07-CA-053570

MICHAEL ANTHONY HENSON, An Individual

Charging Party

OPPOSITION OF COUNSEL FOR THE ACTING GENERAL COUNSEL TO RESPONDENT GM'S MOTION FOR ABEYANCE

On May 3, 2013, Respondent General Motors, LLC (GM) moved that the pending exceptions be held "in abeyance until the Board has a properly seated quorum of members sufficient to issue a valid decision." (p. 3, ¶7)

GM relies on *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) (petition for certiorari filed April 25, 2013). It is correct that in *Noel Canning*, the D.C. Circuit held that the President's January 2012 appointments to the Board were not valid. However, in its post-*Noel Canning* decisions, the Board notes that in *Noel Canning*, the D.C. Circuit itself recognized that its conclusions concerning the Presidential appointments had been rejected by other circuit courts to address the issues. Compare *Noel Canning v. NLRB*, 705 F.3d at 509, to *Evans v. Stephens*, 387 F.3d 1220, 1226-1227 (11th Cir. 2004) (en banc); *United States v.*

Woodley, 751 F.2d 1008, 1012-1013 (9th Cir. 1985) (en banc); United States v. Allocco, 305 F.2d 704, 709-715 (2d Cir. 1962). Thus, in Mountain View Country Club, Inc., 359 NLRB No. 102, slip op. 1, fn. 1 (April 25, 2013), and Belgrove Post Acute Care Center, 359 NLRB No. 77, slip op. 1, fn.1 (Mar. 13, 2013), the Board concluded that because the "question [of the validity of the recess appointments] remains in litigation," until such time as it is ultimately resolved, "the Board is charged to fulfill its responsibilities under the Act."

Accordingly, we respectfully urge the Board to deny GM's motion, and to decide this case in the ordinary course.

/s/ Linda Rabin Hammell

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Dated: May 6, 2013

CERTIFICATE OF SERVICE

I certify that on May 6, 2013, I caused copies of Opposition of Counsel for the Acting General Counsel to Respondent GM's Motion for Abeyance, in *General Motors, LLC, Case 7-CA-53570*, to be served upon all parties of record, by electronic transmission, as follows:

Respondent:

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